**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

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| ROBERT M. CULPEPER and JANET B. CULPEPER,<br><br>Respondents,<br><br>v.<br><br>ISAAC JORDAN and BRANDY JORDAN, husband and wife, and the marital community composed thereof, and ALL OTHER UNKNOWN OCCUPANTS,<br><br>Appellants. | ) | No. 62307-9-I<br><br>DIVISION ONE<br><br>UNPUBLISHED<br><br>FILED: July 27, 2009 |

Cox, J. — A landlord must strictly comply with the time and manner requirements for serving a three day notice under the unlawful detainer statutes, and failure to do so deprives the court of subject matter jurisdiction over the unlawful detainer proceedings. Because the landlord's method of notice in this case did not strictly comply with the statute, we reverse the trial court's judgment of unlawful detainer. Because the tenants are the prevailing party on appeal, we award them attorney's fees on appeal and remand for the trial court to determine the amount of those fees and to exercise its discretion regarding the tenants' request for fees at trial.

The trial court's findings, which we summarize below, are not challenged on appeal and are therefore verities.[1]

[1] Harris v. Urell, 133 Wn. App. 130, 137, 135 P.3d 530 (2006), review denied,

In 2007, Isaac and Brandy Jordan, husband and wife,[2] leased a Snohomish County residence from Robert and Janet Culpeper. Both Isaac and Brandy signed the lease.

In the spring of 2008, the Jordans became delinquent in their rent. On April 21, 2008, Robert Culpeper hand delivered a three day notice to "Pay or Vacate" to Isaac Jordan. The notice stated that it was "To: Isaac & Brandy Jordan[.]" Within minutes of receiving the notice, and while Mr. Culpeper was still present, Isaac handed the notice to Brandy. The Jordans neither paid the past due rent in full nor vacated the premises.

In June 2008, the Culpepers filed this action for unlawful detainer. In their answers and trial brief, the Jordans argued that the court lacked subject matter jurisdiction because the Culpepers had not satisfied the statutory notice requirements for an unlawful detainer. They asserted that RCW 59.12.040 required the Culpepers to deliver a separate copy of the notice to each of them. Because Mr. Culpeper only delivered one copy of the notice, and because he only delivered that copy to Isaac, the Jordans claimed that Brandy had not been properly served with the notice and that the court lacked subject matter jurisdiction.

Although the court acknowledged that service of the notice "could have

160 Wn.2d 1012 (2007).

[2] Although the court made no finding that the Jordans are married, that fact is not disputed.

been better done,"[3] it was "hard-pressed to figure out what difference it could have made if each of them was handed [a separate notice] given that they both saw it at the same time." The court concluded that the notice complied with the statute and entered a judgment of unlawful detainer.

The Jordans appeal.

**SERVICE OF NOTICE**

The central issue on appeal is whether the trial court erred in concluding that the Culpepers complied with the notice requirements of RCW 59.12.040. We review that conclusion de novo.[4] For the reasons set forth below, we conclude the court erred.

The unlawful detainer statutes authorize a three day notice to pay rent or vacate the premises for a tenant's default in paying rent.[5] Under RCW 59.12.040, the notice

> shall be served either (1) by delivering a copy personally to the person entitled thereto; or (2) if he be absent from the premises unlawfully held, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his place of residence; or (3) if the person to be notified be a tenant, or an unlawful holder of premises, and his place of residence is not known, or if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person

[3] Report of Proceedings (August 7, 2008) at 39.

[4] City of Seattle v. Megrey, 93 Wn. App. 391, 393, 968 P.2d 900 (1998) (trial court's conclusions of law are reviewed de novo); Rosander v. Nightrunners Transport, Ltd., 147 Wn. App. 392, 196 P.3d 711 (2008) (adequacy of notice is a question of law that is reviewed de novo); Homeowners Solutions, LLC v. Nguyen, 148 Wn. App. 545, 550, 200 P.3d 743, 746 (2009) (statutory interpretation is a question of law).

[5] RCW 59.12.030(3).

> there residing, if such a person can be found, and also sending a copy through the mail . . . .

Because this statute hastens the recovery of possession without necessitating an action for ejectment, a landlord must comply with the requirements of the statute in order to take advantage of its favorable provisions.[6] Courts require strict compliance with the statute's time and manner requirements, and any noncompliance deprives the superior court of subject matter jurisdiction over the unlawful detainer proceeding.[7]

Here, the court found that the Culpepers satisfied subsection (1) of the statute, which authorizes notice "by delivering a copy personally to the person entitled thereto . . . ." RCW 59.12.040(1). The parties agree that the notice to Isaac complied with this subsection, but disagree as to whether the notice to Brandy was proper. The Jordans contend subsection (1) requires the landlord to deliver a separate copy of the notice to each tenant, and to deliver the copies personally to each tenant. Because the landlord did not give Brandy her own copy of the notice, and because the copy she received was delivered by Isaac, not the landlord, the Jordans conclude her notice did not comply with the statute. The Culpepers, on the other hand, contend a single notice addressed and delivered to both tenants complies with the statute.

The statute is not entirely clear whether separate copies of the notice

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[6] Housing Authority of City of Everett v. Terry, 114 Wn.2d 558, 563-64, 789 P.2d 745 (1990).

[7] Christensen v. Ellsworth, 162 Wn.2d 365, 372, 173 P.3d 228 (2007).

must be provided to each tenant, and whether delivery through a third person in the landlord's presence is sufficient. Because the statute must be strictly construed in favor of the tenant,[8] we construe the statute in favor of the Jordans and hold that the notice to Brandy did not comply with RCW 59.12.040(1).[9] Specifically, the landlord did not "deliv[er] a copy personally to the person entitled thereto," the cotenant, Brandy. Accordingly, the trial court lacked subject matter jurisdiction over the proceedings.[10]

**ATTORNEY FEES**

The Jordans request attorney fees on appeal and for the proceedings below under RCW 59.18.290(2), which provides:

> It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except under a valid court order so authorizing. Any landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him, and the prevailing party may recover his costs of suit or arbitration and reasonable attorney's fees.

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[8] Laffranchi v. Lim, 146 Wn. App. 376, 383, 190 P.3d 97 (2008).

[9] We note that our holding is supported by Professor Peck's article, Landlord and Tenant Notices, 31 Wash. L. Rev. 51, 66 (1956), in which he concludes that when "a husband and wife are parties to the lease, copies of the notice [under RCW 59.12.040] should be served on both."

[10] We reject the Culpepers' suggestion that the court obtained subject matter jurisdiction by properly serving notice only on Isaac. Despite the clear prohibition against citing unpublished opinions to this court, former RAP 10.4(h), GR 14.1(a), the Culpepers rely on Ledaura LLC v. Gould, et al., No. 37379-3-II, 2009 WL 989122 (April 14, 2009), an unpublished decision from Division Two of this court. In any event, we disagree with that decision on the basis of our analysis in this case. We also note that the unpublished decision is contrary to this court's recent decision in Homeowners Solutions, LLC v. Nguyen, 148 Wn. App. at 551 (noncompliance with foreclosure notice requirements as to some parties rendered foreclosure sale void as to all parties), and the supreme court's decision in Christensen v. Ellsworth, 162 Wn.2d at 372 (noncompliance with the notice requirements of RCW 59.12.030 deprives the court of subject matter jurisdiction "over the unlawful detainer *proceeding*.") (emphasis added).

The Culpepers contend this statute applies to unlawful detainer actions brought under RCW 59.12.020(2), but not to unlawful detainer actions brought under RCW 59.12.020(3) for a default in the payment of rent. We disagree.

RCW 59.12.030 defines the different types of unlawful detainer. Under subsection (2), a monthly tenant unlawfully detains property if he or she continues in possession "after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice . . . requiring him or her to quit the premises at the expiration of such month or period." RCW 59.12.030(2). Under subsection (3), which applies here, a tenant unlawfully detains property "[w]hen he or she continues in possession . . . after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises . . . [and the request] has remained uncomplied with for the period of three days after service thereof." RCW 59.12.030(3). The Culpepers assert that only subsection (2) deals with holdover tenancies, and therefore attorney's fees under RCW 59.18.290(2) are available only for unlawful detainer actions brought under that subsection. This assertion is meritless.

Under both subsections, the unlawful detainer action is based on the tenant's possession after termination of the tenancy. Subsection (2) addresses continued possession following notice to "quit the premises," while subsection (3) involves possession after notice demanding payment "or the surrender of the

detained premises . . . ." RCW 59.12.030(2), (3). In either case, the tenant is allegedly holding over after the tenancy has terminated. Significantly, the lease and three day notice in this case plainly state that the tenancy will be "terminated" if, after three days' notice, the tenant does not pay the rent or vacate the premises. Thus, contrary to the Culpepers' assertions, RCW 59.18.290(2) is applicable here.

An award of fees to the prevailing party under RCW 59.18.290 is discretionary with both the trial court and this court.[11] Because the Jordans prevailed in this court, we award them fees on appeal.[12] We remand, however, for the trial court to exercise its discretion under the statute whether it should award fees for trial and to determine the amount of fees on appeal. RAP 18.1(i).

Because of our resolution of the fee issue on the above basis, we will not address whether RCW 4.84.250 and .270 apply to this special statutory proceeding.

We reverse the decision of the trial court and remand for further proceedings.

Cox, J.

WE CONCUR:

[11] Council House, Inc. v. Hawk, 136 Wn. App. 153, 159, 147 P.3d 1305 (2006); Mike v. Tharp, 21 Wn. App. 1, 583 P.2d 654 (1978).

[12] RAP 18.1; Council House, Inc., 136 Wn. App at 162.

Eckerson, J.  Ajid, J.